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DEVELOPING A CHILD ADVOCACY LAW CLINIC: A LAW SCHOOL CLINICAL LEGAL EDUCATION OPPORTUNITY

Donald N. Duquette*

Clinical legal education has become an accepted and integral complement to traditional law school curricula. Professor Duquette argues that clinical education is uniquely able to integrate the teaching of practical skills and legal doctrine, elevating students' understanding of both. Duquette maintains that a child advocacy law clinic can teach a broad range of practical skills, benefit the hosting law school by providing an opportunity for interdisciplinary education as well as a public relations benefit, while simultaneously serving an important need in most communities for quality representation of all parties in child abuse and neglect cases. Most importantly, participation in a child advocacy law clinic has a profound effect on students who must face significant ethical, emotional, and legal issues that require both quick learning and deep reflection. In hopes of aiding other law schools interested in developing a child advocacy clinic, Duquette describes the University of Michigan Child Advocacy Law Clinic, detailing the selection of cases for the representation of children, parents, and social service agencies, the supervision of students, the classroom component of the curriculum, and the staffing and budgeting choices made.

* Clinical Professor of Law and Director of the Child Advocacy Law Clinic, University of Michigan Law School. B.A. 1969, Michigan State University; J.D. 1974, University of Michigan Law School. I am deeply grateful for my association with this great institution. I thank the four Deans for whom I have worked—Theodore St. Antoine, Terrance Sandalow, Lee Bollinger, and Jeffrey Lehman. Without the intelligent guidance of Professor David Chambers, who co-taught the classroom component of the Child Advocacy Law Clinic (the Clinic) in its early years, the Clinic would not have developed, improved and, thus, survived.

For reviewing this manuscript I thank David Chambers; Paul Reingold, director of the Michigan General Clinical Law Program; my teaching colleagues in the Clinic, Suellen Scarnecchia and Lance Jones; and David Herring, formerly of the Clinic and now founder of the Child Welfare Law Clinic at the University of Pittsburgh School of Law.

My most profound appreciation goes to the over 500 law students who have taken the Child Advocacy Law Clinic over the past 20 years. It has been a privilege to work with these amazingly talented individuals. While some have made careers of child advocacy, most are engaged in more traditional law practices. However, they all tell us that they are better lawyers for having participated in the Clinic. I hope this Article is helpful to law schools and faculty elsewhere who are considering developing similar programs.

INTRODUCTION¹

Perhaps a child advocacy law clinic is right for your law school. As clinical legal education becomes firmly established in the curricula of American legal education, law schools regularly consider new programs in pursuit of the right blend of clinical and classroom opportunities for their students.² Most schools have made clinics a part of their curriculum, relying upon them as vehicles for developing practical competency, and increasingly expecting them to be educationally disciplined and focused.³

At the same time that law school deans and faculties are looking for programs that deliver an educationally meaningful experience for their students, there is an increasing unhappiness with the quality of legal services provided to children and a recognition of the need for a better trained bench and bar to handle children's legal cases.⁴ While resources are available for children in need,⁵ the quality and sophistication of the legal

1. Private philanthropy makes this story and the telling of it possible. The story begins in 1976 when the Harry A. and Margaret D. Towsley Foundation, based in Ann Arbor, provided a three year grant to the University of Michigan Law School to develop an interdisciplinary project on child abuse and neglect. The Towsley Project, which joined the School of Social Work and the Medical School Departments of Pediatrics and Psychiatry, was designed to explore techniques of interdisciplinary professional collaboration and education for the benefit of abused and neglected children. Perhaps reflecting the perspective of Dr. Harry Towsley, himself a notable pediatrician, the teaching and research of the project was to be clinical, based on actual and specific cases. I was hired in 1976, to develop and direct the law school clinical component of the Towsley Project.

2. A list of law school child advocacy clinics and their contact persons is on file with the *University of Michigan Journal of Law Reform*.

3. See TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP, AMER. BAR ASS'N SEC. OF LEGAL EDUC. AND ADMISSIONS TO THE BAR, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM 234–35, 238 (1992) (known as the "MacCrate Report" after Robert MacCrate, committee chair) [hereinafter MACCRATE REPORT].

4. See, e.g., AMERICAN BAR ASS'N PRESIDENTIAL WORKING GROUP ON THE UNMET LEGAL NEEDS OF CHILDREN AND THEIR FAMILIES, AMERICAN CHILDREN AT RISK: A NATIONAL AGENDA FOR LEGAL ACTION 7 (1993) [hereinafter CHILDREN AT RISK] ("Even when children are represented, the representation they receive is sometimes inadequate."); Bruce A. Green & Bernardine Dohrn, *Foreword: Children and the Ethical Practice of Law*, 64 FORDHAM L. REV. 1281, 1286 ("[R]ecent studies show that lawyers often serve children poorly.").

5. See ANN M. HARALAMBIE, THE CHILD'S ATTORNEY: A GUIDE TO REPRESENTING CHILDREN IN CUSTODY, ADOPTION, AND PROTECTION CASES 214–19 (1993).

profession and legal institutions serving children remain deficient in most areas of the country.⁶

In this context, the W.K. Kellogg Foundation embarked on an ambitious program to reform America's child welfare system. The Kellogg Families for Kids Initiative (FFK Initiative), which began in 1991, has specific objectives for foster care reform and is active in eleven sites in Arizona, Kansas, Massachusetts, Michigan, Mississippi, Montana, New York, North Carolina, Ohio, South Carolina, and Washington.⁷ The FFK Initiative seeks to bring about comprehensive, institutional change in the social systems that control the placement of children into permanent homes, i.e., public and private child welfare agencies, the courts, and extended family systems. The goal of placing children in permanent homes will be frustrated without a legal system that is sensitive and responsive to the needs of maltreated children and their parents. Legal reform is, therefore, one element of the FFK Initiative. The project at the University of Michigan Law School, in partnership with the eleven Kellogg sites and their bench, bar, and law schools, is attempting to bring about this reform by improving the way legal institutions and the legal profession deal with children in foster care.

This Article is intended to assist law schools in developing child advocacy law clinics. Such clinics are a sound way to meet traditional clinical education goals while providing legal services to allegedly abused or neglected children. Part I sets out the rationale for a child advocacy law clinical program and some of its educational objectives. Part II describes the University of Michigan Law School's Child Advocacy Law Clinic (the Clinic) in some detail as an assistance to law school deans and faculty who are contemplating investing in a children's law clinic for their school. The appendices propose budget and funding ideas.

6. See generally CHILDREN AT RISK, *supra* note 4; Green & Dohrn, *supra* note 4, at 1286-87.

7. See W.K. KELLOGG FOUND., FAMILIES FOR KIDS: BUILDING THE DREAM (on file with the *University of Michigan Journal of Law Reform*).

I. WHY A CHILD ADVOCACY LAW CLINIC?

A. Educational Goals for Law Students

The ideal clinical program is not a passing fad but an element of the core curriculum that consistently achieves educational outcomes fundamental to a law school's mission. The traditional goals of a clinic are met by a teaching style of "planning, doing, reflecting." A good clinical experience integrates general legal practice skills with the study of legal doctrine. One cannot separate theory from practice, abstract knowledge from practical skill, or understanding of the professional role from the experience of professional action. No matter what specialty a clinic engages in—landlord-tenant, public benefits, criminal defense, or child advocacy—the educational objectives should be to teach skills that can be applied to other areas of the practice of law.

The *MacCrata Report*—one of the most ambitious and influential recent writings on legal education—formulates a Statement of Fundamental Lawyering Skills and Professional Values (Statement)⁸ specifying which skills are essential to competent legal representation. The Statement does not purport to be comprehensive, nor is it meant to be a standard for evaluating a law school's curriculum.⁹ It is, nevertheless, a useful tool by which to judge any legal education endeavor, including a new clinical program. "Law Schools can use the Statement as a focus for examining proposals to modify their curricula to teach skills and values more extensively or differently than they now do."¹⁰ The *MacCrata Report* argues that legal training is "best provided through a combination of law school education and opportunities for learning outside the law school environment."¹¹

The Statement includes ten skills and four values central to the legal profession.¹² Comparing the pedagogical value of a child advocacy clinic with this list demonstrates how successfully a child advocacy clinic can teach a broad range of lawyering skills—including those not unique to child advocacy.

8. See MACCRATE REPORT, *supra* note 3, at 135–221.

9. See *id.* at 131.

10. *Id.* at 128.

11. *Id.* at 131.

12. See *id.* at 138–41.

The fundamental lawyering skills in the *MacCrate Report* are as follows:

1. Problem Solving;
2. Legal Analysis and Reasoning;
3. Legal Research;
4. Factual Investigation;
5. Communication;
6. Counseling;
7. Negotiation;
8. Litigation and Alternative Dispute Resolution Procedures;
9. Organization and Management of Legal Work; and
10. Recognizing and Resolving Ethical Dilemmas.¹³

The fundamental values central to the legal profession are: 1) provision of competent representation; 2) striving to promote justice, fairness, and morality; 3) striving to improve the profession; and 4) professional self-development.¹⁴ A child advocacy program can achieve the above objectives.

B. Meeting Community Needs

A child advocacy law clinic can meet important community needs. Abused and neglected children and their families are not often well represented in most jurisdictions.¹⁵ Attorneys providing this representation are often poorly compensated and have little or no special training.¹⁶ Law schools can supplement the meager resources of the juvenile and family courts by providing high quality representation through a child advocacy clinic. With proper preparation, training and

13. See *id.* at 138-40.

14. See *id.* at 140-41.

15. See CHILDREN AT RISK, *supra* note 4, at 7; U.S. DEP'T OF HEALTH & HUMAN SERVS., FINAL REPORT ON THE VALIDATION AND EFFECTIVENESS OF LEGAL REPRESENTATION THROUGH GUARDIAN AD LITEM xiii (1993) [hereinafter GUARDIAN AD LITEM REPORT].

16. See CHILDREN AT RISK, *supra* note 4, at 7-8.

supervision, and careful selection of cases, law student representation can be this high quality representation.

In some cases, the presence of law students in these proceedings has improved the level of lawyering in court. Judges have observed that law students know the statutes, court rules, and governing cases better than more experienced but busier counsel. Students work hard at investigation, problem-solving, and other case preparation. As a consequence, despite their lack of experience and occasional awkwardness, the Clinic students set a high standard of performance, and clients may get better legal services than they would from the private bar.

Social agencies and the child welfare system also benefit from trained and aggressive individual representation. Research has demonstrated that trained lawyers—as well as the participation of trained law students—accelerate the court process, reduce the amount of time children spend in foster care, and divert more cases from the formal court process without exposing the child to additional danger.¹⁷

C. Benefits to the Law School

Like many clinical programs, a child advocacy clinic links the law school and the practicing bar, narrowing the gap between the academy and the practice of law. The community service discussed above develops and enhances the law school's constituency which includes the bench, bar, and broader community. Because children are a sympathetic class of citizens, there is a high public relations benefit from a child advocacy clinic.

Interdisciplinary opportunities for teaching and research are particularly rich in such a program. Collaborations mutually beneficial to law schools and other academic departments, such as psychology and social work, are easy to develop. The University of Michigan has developed an interdisciplinary seminar on child abuse and neglect which includes faculty and advanced students from law, social work, and clinical psychology. Several doctoral dissertations and faculty research and

17. See Donald N. Duquette & Sarah H. Ramsey, *Representation of Children in Child Abuse and Neglect Cases: An Empirical Look at What Constitutes Effective Representation*, 20 U. MICH. J.L. REFORM 341, 388-91 (1987).

writing projects have grown from this seminar.¹⁸ Law students benefit from these interdisciplinary collaborations by realizing that they need more than good legal and analytical skills to be a good lawyer. Opportunities for legal scholarship can also grow from the child advocacy clinical program itself.¹⁹ This area of law and policy is of growing importance, relatively unstudied, and in need of scholarly exploration.²⁰

The addition of a state Child Welfare Law Resource Center benefits the broader community, helps the law school's relations with the community, and is a logical companion to a child advocacy clinic. Such a center can provide regular training for judges and lawyers who handle child abuse, child neglect, and foster care cases, develop legal and interdisciplinary resource materials for the bench and bar, and respond to specific requests for child welfare legal information. A Child Welfare Law Resource Center recently began operation at the University of Michigan Law School. This center provides memos to member lawyers and judges upon request, offers training, and issues a regular newsletter in cooperation with the state bar Juvenile Law Section.²¹

II. THE UNIVERSITY OF MICHIGAN LAW SCHOOL CHILD ADVOCACY LAW CLINIC

A. Brief Description

Since 1976, the Clinic has offered law students a specialized clinical legal education in cases of alleged child abuse and neglect. The student attorneys handle cases in three distinct legal roles—attorney for the child, for the parents, and for the agency. To avoid conflicts of interest, services are provided in different Michigan counties. Sixteen to twenty law students take the one semester course for seven academic credits and

18. See Suellyn Scarnecchia, *Interdisciplinary Seminar in Child Abuse and Neglect with a Focus on Child Protection Practice*, 31 U. MICH. J.L. REFORM 33 (1997).

19. See, e.g., Albert E. Hartmann, *Crafting an Advocate for a Child: In Support of Legislation Redefining the Role of the Guardian ad Litem in Michigan Child Abuse and Neglect Cases*, 31 U. MICH. J.L. REFORM 237 (1997).

20. See generally Green & Dohrn, *supra* note 4, at 1284–90 (discussing current issues surrounding the legal representation of children).

21. Further information on the Child Welfare Law Resource Center is on file with the *University of Michigan Journal of Law Reform*.

work in teams of two. A typical semester caseload includes one termination of parental rights case in which the student represents the agency, one case in which the student represents parents accused of child maltreatment, and three cases in which the student represents children in child protection or guardianship matters. In addition to these cases, many students participate in impact litigation, appeals, amicus briefs, and special projects that include writing legislation or conducting independent research.

The legal representation is guided by an interdisciplinary team of teachers and consultants. The student attorneys have six class hours per week for the first two-thirds of the semester and four hours per week thereafter. The class introduces students to child welfare law and policy and presents an interdisciplinary approach to child protection and foster care. The class also covers traditional clinical law program subjects—trial practice, interviewing, counseling, negotiation, alternative dispute resolution, and legal ethics. The course is mandatory pass/fail.²²

The Clinic seeks to introduce students to the substantive law and skills demanded of their new lawyer identity, along with the institutional framework within which lawyers operate. The Clinic particularly focuses on the relationship between the lawyer and other child welfare professionals. Building on the field experience of actual casework, the Clinic seeks to make students more self-critical and reflective about the various lawyering functions they must undertake. One goal is for students to develop habits of thought and standards of performance that will enable them to learn from experience in their future professional growth.

B. Case Selection

1. *General Considerations*—Selection of the right mix of cases is perhaps the most important component of a good clinical program. The ideal case is complex enough to challenge yet discrete enough to allow student attorneys to assume a substantial amount of responsibility. In a semester-long clinic,

22. "Pass/fail" is technically a limited grade option meaning that a student with satisfactory performance receives an "S" and a student whose performance is unsatisfactory receives grades of C-, D+, D, or F.

legally significant events must occur within a fairly brief period of time. Students benefit the most when their cases are resolved, or at least progress significantly, during their term in the course. Large cases and complex litigation are useful components of the student experience, but more modest cases provide a more practical overall learning vehicle.

Case selection is the province of the clinical faculty. It should never be delegated to anyone. The primary criterion for case selection must be legal education. Public service, building relations with courts, or righting a perceived injustice are not the primary goals of the Clinic. Clinical faculty are in the best position to evaluate and apply the legal education criteria. While clinics can often serve both interests of education and public service, educational goals must prevail if the two are not in harmony. The tension between educational goals and community service is always present. Clinical faculty may want to address a perceived injustice or meet a serious legal need by putting law students to work on certain issues. It is tempting to respond to a local judge who wants to send certain cases to law students because those cases are not adequately served by existing resources.²³ However, while service to the community is a value that is consistent with educational goals *much* of the time, it is not consistent *all* of the time.

Clinical programs are expensive for law schools.²⁴ Therefore, deans should expect clinical faculty to insure that law students receive a substantial educational benefit from their clinic participation and are not exploited for service. The choices between education and community service can involve complex trade-offs. Because the court and community needs are very real, the law school may wish to accommodate a court or a particular case in the interests of maintaining good relations or to discharge an ethical or political obligation to the community. Meeting legal needs can be justified as an educational experience for law students in that it demonstrates the highest values of the profession by "serv[ing] the public and

23. In my experience, judges, lawyers, and community social service providers commonly expect that eager law students can somehow accomplish what experienced lawyers and social agencies cannot when a case does not fit into existing structures. Such a case might require mediation between a parent and child, monitoring of school performance, or drug treatment. More often, however, a case that is too elusive for experienced lawyers or existing social services is also too elusive for second and third year law students, and not necessarily beneficial to their education.

24. See *infra* app. B for a discussion of the budgetary requirements of the Clinic.

... further[ing] the interests of justice, fairness and morality."²⁵ Nonetheless, every effort should be made to keep educational goals paramount.

Consistent with the above admonition, a clinic should avoid situations where the clinic has a large obligation for case service, over and above the educational goals. By associating with a group like a prosecutor's office, child advocacy group, or a public defender's office, a clinic can select the most interesting cases at their educationally most valuable stage and then return them to the office when they no longer suit educational purposes. The law school may be criticized for being self-interested or for "creaming" (taking the most desirable cases from other interested parties), but there is still a benefit to the host office if the clinic provides it with high quality services. On the same note, a clinic should never transfer a case to another lawyer or office if the transfer and lack of continuity will adversely affect the client. For such reasons, many clinical teachers stay with cases for years with or without student assistance, well after the educational value of a case has become minimal. Structurally, however, there is an obvious advantage to minimizing the number of cases of marginal educational benefit that the program retains and continues to serve.

2. Agency Representation—Each student team in the Clinic is assigned at least one case representing the state child protection agency in a matter likely to go to a full trial. The Clinic acts as trial counsel in termination of parental rights cases in several counties. County offices of the Michigan Family Independence Agency (formerly the Department of Social Services) refer cases where they wish to seek termination of parental rights leading to adoption or other permanent placement of the children. The Clinic accepts these cases in the first three weeks of the semester. A faculty member selects the referred cases on the basis of students' educational needs rather than the needs of the agency, although these factors rarely conflict. The faculty look for cases that are legally and factually complex. The Clinic prefers to enter a case before the agency has drafted a termination of parental rights petition so that students can thoroughly investigate the case and develop their own legal theories.

Once the faculty member agrees to take the case, it is assigned to a student team. The Clinic handles the termination

25. MACCRATE REPORT, *supra* note 3, at 213.

of parental rights cases completely—from the initial decision as to whether to bring a termination request immediately, to drafting and filing a petition, and finally, to trying the case. If the court orders termination of parental rights, the county prosecuting attorney generally replaces the Clinic for purposes of appeal. The Clinic will handle appeals in complex or particularly interesting cases. Michigan Court Rules require that a trial on a petition for termination of parental rights be held within forty-two days of filing,²⁶ so cases will nearly always go to trial during the tenure of the student team that drafts the petition. Many of these cases require expert testimony from physicians, psychologists, and social workers.

These cases are momentous in their consequences and provide reasonably complex litigation experiences for law students. They offer superlative learning experiences because the law students are responsible for fact investigation, petition drafting, discovery, and a full trial that typically lasts from a half-day to three days. Longer trials are not uncommon; one case involved eleven days of testimony. Trials of four to five days occur nearly every semester. Settlement options are pursued vigorously on behalf of the agency, but because the agency and child's attorney typically try to settle from the beginning of the case, the number of settlements at the courthouse door is low. The tight timeline (forty-two days from petition to trial)²⁷ serves not only the child's need for a timely decision but also the student's need for a meaningful legal experience within the course of a single semester.²⁸ The Clinic has developed good relations with county child welfare offices and with the county prosecuting attorneys' offices; both appear to welcome the Clinic's participation. In our experience, student attorneys can often devote more time to the cases than a busy prosecutor's office and generally perform at a high level of competence.

26. See MICH. CT. R. 5.974(F)(1)(b).

27. See *id.*

28. Even in states without strict time requirements for litigating termination of parental rights cases, the broad and rich range of issues present in these cases can still provide students with a great educational benefit. There is also a benefit to the children involved because the Clinic and law students are likely to be aware of the "child's sense of time" and thus pursue the cases in the most timely manner possible. The phrase refers to the fact that each day or week feels far longer to a child than it does to an adult, in part, because each unit of time is a greater percentage of the child's life. See JOSEPH GOLDSTEIN, ANNA FREUD & ALBERT J. SOLNIT, *BEYOND THE BEST INTERESTS OF THE CHILD* 40-47 (1979); JOSEPH GOLDSTEIN, ANNA FREUD & ALBERT J. SOLNIT, *BEFORE THE BEST INTERESTS OF THE CHILD* 50-51 (1973).

3. *Representing Children*—Each student team is assigned three to five cases representing children. The Genesee County Probate Court in Flint, Michigan, our primary source for children's cases, assigns the Clinic to represent children alleged to be abused or neglected. Each semester the Clinic receives new children's cases by appearing for preliminary hearings on six to eight days in the third through fifth week of the semester. The Clinic represents all children whose cases are initiated during this time. Children's cases are handled from beginning to end, including appeals. Each student team generally takes over one or two cases commenced in previous semesters. Because most children's cases are resolved within eighteen months—through return to their birth family, permanent placement with relatives, or termination of parental rights and adoption—clinic cases are usually closed within that time.

Representing children provides excellent opportunities for legal education. First, it inspires and nurtures altruism. Law students see the law and legal institutions as they affect predominately poor children²⁹ and come to understand the lawyer's obligation to serve the community and the disadvantaged. Many law students come to law school with a commitment to public service, a commitment reinforced by this experience. Most graduates of our Clinic have not pursued child advocacy as a career, but most are motivated to include work with children or other community service in a more traditional career. This is a very important and beneficial consequence of the child advocacy experience.

Second, this rapidly developing area of the law is hard to match as an intellectual experience. Children constitute a class of unrepresented or underrepresented persons in America³⁰ whose legal status and legal rights are continually being litigated.³¹ Important questions for courts to consider include: Given their natural dependent state, what individual rights should a child have? When should the state intervene directly in family life? What obligation should the state have for the welfare of children? What are the mutual rights and obligations of family members? Who are classified as family members? What is a "family" in today's society? To what extent should children have constitutional rights separate from their

29. See Green & Dohrn, *supra* note 4, at 1285.

30. See CHILDREN AT RISK, *supra* note 4, at 7-8.

31. See Green & Dohrn, *supra* note 4, at 1284-85.

parents? The Clinic's faculty and students explore these questions and many others in the context of actual cases.

It is important that students not only learn the law, both procedural and substantive, and methods of gathering and presenting facts, but also that they learn how to apply the facts and the law in a practical setting. Representing children gives students an opportunity to exercise professional judgment and decisionmaking where a great deal is at stake. Preliminary hearings, for example, provide the student attorney with an opportunity to exercise professional judgment at a critical personal and legal stage for the child. At the preliminary hearing, the student attorney faces a situation that the child protection worker considers an emergency, one in which the state is generally seeking removal of the child from his home. With only about twenty to thirty minutes to gather and analyze facts, the student has to present a well-reasoned and supported recommendation to the court. In my experience, typical cases include a battered infant still in the hospital, a child who may have been sexually abused, or a child left alone by a mentally ill parent or a parent using crack cocaine. The student attorneys have some knowledge of child development and the importance of continuity in a child's life. They will try to protect the child by limiting the disruption of the child's living pattern as much as possible, while balancing the fact that the child may be in serious, sometimes life-threatening, danger if left without the protection of the court.

The Clinic prepares students for decisionmaking through readings, discussions, and classroom simulations. The students are taught the law and legal procedures and have some understanding of the social services system. Knowing that the judges and referees give considerable weight to the Clinic's recommendations, the student attorneys feel pressure to develop cogent recommendations for the court. Students generally perform very well under these conditions which, in the context of real-life consequences, greatly enhances students' confidence and professional development.³²

The child's attorney represents only the child, regardless of the interests of the parents, the agency, or the court. Sometimes the Clinic's recommendations align with those of the agency or the parents, and sometimes they align with neither.

32. A supervising attorney is with the students throughout the preliminary hearing process.

Since the child's interests are usually served by prompt and effective delivery of rehabilitative services to the parents, the child's attorney monitors and nudges the social agencies responsible for providing these services, resorting to the court when necessary. Lawyers traditionally help guide clients through complex bureaucracies, and the students must do the same for their child clients. In my experience, elements of the social service system do not always coordinate well with the court's orders. Often the child's attorney can aid the child in accessing benefits to which he is legally entitled, such as Social Security, educational benefits, or certain mental health services.

The child's interests are often served by lessening the adversarial tone of the litigation and by adopting a problem-solving approach. Very often the Clinic plays an aggressive mediation role in trying to bring the agency and parents together to create a case plan that is likely to succeed. Student/faculty discussions of alternative dispute resolution mechanisms and the lawyer's role as deal maker and problem solver are natural outgrowths of these experiences.

The client's capacity to influence the litigation varies enormously because clients range from infants to articulate teenagers. The conflict between the law student's perception of her client's best interests and the client's stated wishes can present a major dilemma. The clients suffer a "disability" of minority under the professional rules of conduct and each case presents ethical questions regarding the child's right to have his own voice heard before the court. Client counseling is a challenge when the client is fourteen years old, while for six-year-old children, the lawyer's role may be limited to providing information and answering questions about the court process.

Recognition of a "child's sense of time"³³ is the Clinic's mantra in representing children. Delay and procrastination are harmful to the child's need for stability and continuity. At early stages of a case, once dispositional orders are entered, the Clinic monitors implementation of the case plan to assure that the parents and children are receiving timely services. At later stages of the case, this focus on the child's sense of time encourages legal custody arrangements that provide permanency for the child. Custody arrangements may take the form of guardianships, releases of parental rights for relative or foster parent adoption, or recommendations that the agency

33. See *supra* note 28 for a discussion of "child's sense of time."

petition for termination of parental rights. When the agency does not petition for termination of parental rights, the Clinic may do so.

A lack of continuity from semester to semester presents a problem for the Clinic. Although certain children would benefit from having the same lawyer throughout the entire process, we believe that the careful and thorough representation that the Clinic is able to provide outweighs any possible detriment to the child. The same faculty member generally follows a case from beginning to end, and great care is taken in the transfer of cases from one student team to another. During this process, the student teams have a real opportunity to learn good case documentation skills based on what they receive from others and what they pass on to their successors.

4. Representing Parents—The Clinic also represents parents accused of child abuse or neglect in six or eight cases per year. We try to give each student team at least one case representing a parent. Once we accept, we generally represent the parent to the end of the case. The Clinic often represents the parents in other civil matters related to the child protection action including divorce, child custody, guardianship, and appeals.

We believe that representing a parent provides an essential perspective on the child welfare system. It is easy to demonize a person accused of child abuse and neglect. This up-close and personal look makes students recognize the common humanity they share with these clients, who are most often the poor, powerless, and invisible in our society.³⁴

Representing a parent accused of child abuse or neglect is not politically popular. In twenty years, the Clinic has represented parents in three different counties. Although the quality of student work in these counties was never criticized, in two of these counties, the courts appointed the Clinic to fewer and fewer cases until the number became insufficient. It seems to us that aggressive representation, so welcomed and valued on behalf of the child and the agency, was not so welcomed on behalf of parents accused of child abuse and neglect.

34. According to the Department of Health and Human Services, 68% of incidents of maltreatment occur in homes where the family income is less than \$15,000 annually. See U.S. DEPT OF HEALTH & HUMAN SERVS., THE THIRD NATIONAL INCIDENCE STUDY OF CHILD ABUSE AND NEGLECT 5-3 (1996).

In our experience, students sometimes balk at representing parents accused of child abuse or neglect. We emphasize the perspective that they will gain from this experience and have rarely had to excuse a student from representing parents. Although all clients have foibles and the lawyer-client relationship is tested no matter whom the Clinic represents, parents can present special challenges. A parent may not keep appointments or follow through with commitments. Sometimes his or her version of facts differs markedly from others. Sometimes the client clearly has lied to the student attorney. Law students are often tempted to become over involved with the parent and are forced to struggle with professional boundary issues. Students are sometimes surprised that phone calls to caseworkers, returned so willingly and promptly in counties where they represent the agency and child, are consistently ignored when made on behalf of a parent. Students see the roles of agencies and child attorneys from different perspectives. In our experience, student attorneys become more skeptical of the clumsiness of the social services bureaucracies and less tolerant of the self-righteousness of the child's advocates.

Our experiences indicate that winning at trial is particularly difficult for parents, making negotiation and settlement especially important. A parent generally wishes to limit the state's involvement in his or her family life. It is often better for the parent to win the good will of the social agencies and develop a positive problem-solving relationship than a bitter adversarial one. Sometimes a plea agreement is the best way to resolve a case and maximizes the parent's chance of getting the child back as soon as possible. The opportunities for teaching client counseling in these cases are numerous. On the other hand, sometimes a vigorous adversarial defense is called for. In these cases the students handle discovery, draft and file motions to exclude evidence, and otherwise conduct a full-fledged litigation defense.

5. Other Cases and Projects—Although child protection cases representing the child, parent, and agency form the main curriculum of the Clinic, we occasionally accept other cases when they seem educationally valuable. We will represent children in divorce child custody disputes, and we have a steady flow of cases representing children in contested guardianship cases. In the past we have experimented with truancy, school expulsion, and education cases, but we have found they

do not move rapidly enough through the legal process to suit our purposes.

The Clinic also handles impact litigation cases. In one case we sued a large county juvenile court, as an original action in the Michigan Supreme Court, for neglecting the children under its jurisdiction.³⁵ In another we represented two of sixty-six children removed from the compound of a religious cult in western Michigan after one child was killed.³⁶ The most famous of the Clinic cases was Baby Jessica's contested adoption case in 1993, in which we represented the prospective adoptive parents, Roberta and Jan DeBoer.³⁷ Student attorneys worked on various aspects of that case with the DeBoer's lead attorney, Clinical Professor Suellyn Scarnecchia. This case helped define the public and legal debate in this area. We also occasionally handle other cases in the appellate courts and file amicus curiae briefs if the issues are novel, within our expertise, and educationally valuable for the students.

Over the years the Clinic has been involved with legislation,³⁸ and has assisted in drafting various bills. These projects are carefully selected for students. Not every legislative initiative is discrete enough for students to handle or politically feasible to allow the Clinic to act in the role of technical consultant rather than lobbyist. Past Clinic students helped draft parts of the Michigan Juvenile Code governing judicial monitoring of children in foster care.³⁹ Others prepared testimony for a legislative committee, including videotapes of child interviews, that led to a statute authorizing various child witness protections.⁴⁰

6. Emotional Content—The Clinic cases are very serious and can have a powerful impact on students. The seriousness of the cases and their poignancy heightens the students' involvement and engagement and motivates them to learn all we have to offer in the belief that it will make them a better

35. See *Virtue v. Wayne County Juvenile Court*, 407 Mich. 1150 (1979).

36. For a discussion of this case, see Gregory M. Gochanour, Note, *House of Judah: The Problem of Child Abuse and Neglect in Communes and Cults*, 18 U. MICH. J.L. REFORM 1089, 1089-1119 (1985).

37. See *In re Clausen*, 502 N.W.2d 649 (Mich. 1993).

38. Clinic faculty are often asked to serve on blue ribbon committees convened by the state government, the state supreme court, the state bar, or other groups. Sometimes this work is done as a community service by the faculty members, but occasionally the projects are suitable for the involvement of clinic students.

39. See MICH. COMP. LAWS ANN. § 712A.19a (West 1983).

40. See MICH. COMP. LAWS ANN. § 712A.17b (West 1983).

lawyer—not only in their eventual careers, but also in their next major event of the semester. Third year malaise is certainly not a problem for a child advocacy clinic.

Student attorneys deal with child abuse and neglect in a direct and personal way. The subject matter of a child abuse and neglect clinic is troubling and challenging to any lawyer—emotionally, personally, and technically. Student attorneys visit and get to know children who have experienced trauma and whose futures depend on judicial and social service interventions in which the students play a powerful part. They see in the faces of the children and parents they represent the consequences of physical and sexual abuse and parental drug addiction. Student attorneys also deal with the ultimate and most drastic of child welfare law cases—termination of parental rights.

The intensity of the students' personal experiences is heightened because they feel some responsibility for the system-caused harm they witness. A well-meaning but clumsy bureaucracy, purporting to act for the society at large, may be their client, their ally, or their opponent. The systems in which they practice as officers of the court vary from highly efficient to woefully inept. The bureaucracy and the courts sometimes succeed, but often fail to intervene effectively; their clumsiness and inefficiency can make the family problems worse and can have serious consequences for individual children. Students make guided decisions about whether to seek termination of parental rights on behalf of a child in cases where rehabilitation and reunification might have occurred if the children and families had received better and more efficient services. Sometimes, when the Clinic represents a county social services agency, the students must urge the court to overlook the deficiencies in the agency's intervention in order to achieve the termination of parental rights and adoption. In such cases, the student may feel some complicity in the less than perfect agency social intervention on behalf of a child and the serious consequences suffered not by the offending agency but by the child and parents.

On the other hand, student attorneys can make a significant impact on the cases they handle, and occasionally on the child welfare system itself. We have found that they often feel the responsibility and added anguish of having power to improve the situations the children are facing. Children in foster care or at risk of foster care need highly competent counsel.

Students can function at such a level. The foster care system is complex, bureaucratic, underfunded, and fraught with inter-agency and jurisdictional conflicts. Students in the Clinic can help. Lawyers know how to identify resources, cut through red tape and work out interagency conflicts. Students learn that they can make a difference in a child's life if they are effective lawyers.

It is important to address these emotional and personal issues. Because most students work on technical issues such as investigation, drafting, and trial preparation, it can be easy for them to adopt a "clinical distance" and not recognize the emotional content of the cases they handle. The challenge for clinical faculty is to address the emotional dimension in a way that legitimizes it and also presents a model for learning from experience.

A classic advantage of a clinical legal education is the opportunity for students to assume the mantle of the profession in a setting of acceptance, guidance, and reflection. Students need an opportunity to express and examine their personal feelings and emotions. We choose to address the psychological component of the students' work in small case preparation meetings with students and in multidisciplinary group case conferences. We encourage students to talk with faculty and with one another, and we create a climate where they feel free to explore their personal reactions to the cases they are handling. The faculty teaches students that their emotional reactions can affect their professional performance. A lawyer must deal with her negative feelings toward a client/parent accused of child abuse or neglect or toward the government social agency whom she represents. Unless dealt with properly, those feelings toward a client can sabotage a lawyer's effectiveness as an advocate.

C. Staffing

Three clinical law faculty members and a part-time psychologist (a University faculty member) are assigned to the Clinic. We also have an advanced clinical psychology graduate student who assists in teaching and providing case consultation. Support staff include an administrator and a legal secretary. The number of law faculty in the program has

varied from one to four. The interdisciplinary component has been essential from the beginning and has been met by a child psychiatrist, social worker, or a pediatrician. For a few years our teaching team included all of the above—a luxury that only experimental grant funding allowed.

Of the three clinical law faculty, two are tenured and one is a junior faculty member with a three to five year contract.⁴¹ The tenured faculty have presumptively renewed seven year contracts that are substantially equivalent to traditional academic tenure. Our law school standards on clinical tenure also provide for short-term hires who are not eligible for clinical tenure. The mix of tenured and short-term clinical faculty has worked well for us. The tenured faculty give the Clinic stability and continuity in the law school, the courts, and the communities. Secure and long-term leadership in a clinic is essential for competence in teaching, credibility inside the academy, and standing in the outside community. This standing is very important for relations with the courts and agencies, and for contacts that can become funding sources. The short-term faculty, on the other hand, bring a fresh perspective and excitement to the program. The short-term positions also provide for training of future child advocates and clinical law teachers, provide an entree into an academic career, and keep the total salary budget for the Clinic lower than it would be if only tenured faculty were hired.

Having at least two or three individual lawyers available, even if only for a portion of their time, gives some flexibility in the face of conflicting court appearances, and helps keep classroom activities on schedule. In the beginning, the Clinic ran with a single faculty member teaching eight students with a live-client caseload and a classroom component. That is

41. The three clinical faculty do not devote their full time to the Clinic. Typically 2.0 to 2.5 FTE (full time equivalent) faculty are devoted to the Clinic with the remaining faculty time allocated to a variety of grant-funded projects, public service, sabbatical, and other teaching or administrative duties. This mix of activities provides useful diversity, stimulation, and professional growth for the faculty, and in turn informs and improves their teaching and case handling.

We attempt to keep a ratio of 8:1 between students and teaching faculty. With a 2.0 or 2.5 FTE we enroll 16 to 20 students during the fall and winter semesters. The Clinic is not offered for credit during the summer. The junior faculty member has a calendar year appointment and is responsible for covering the summer caseload. The level of activity over the summer is much less than during the rest of the year, which leaves the faculty member free to pursue research and writing. The tenured clinical faculty, like our traditional colleagues, do not have formal Clinic duties during the summer months and are free to pursue personal research, writing, service, or other interests.

certainly not recommended. With a single faculty member, a clinic can maintain an 8:1 ratio but the quality of education suffers without the regularity of scheduling that is possible with a slightly larger program.

D. Supervision

Although students are very carefully supervised, our style of supervision is subtle and indirect. A substantial degree of student autonomy is very important to our educational goals. We stress that the student attorneys are the persons primarily responsible for their cases. Their responsibilities include analyzing the case, developing a position for the client, interviewing and counseling clients, creating a theory of the case, and strategizing for and conducting the trial. However, students could not reach a level of competence and independence without careful in-class preparation and hours spent with the supervisor discussing and preparing the case.

We want to avoid having the students feel they are merely helping the faculty supervisor or working at the supervisor's direction. Rather, the supervisor's job is to guide the students to professional decisions and to take legal actions on the case. Although the supervisor knows the case plan and has helped prepare students to implement it, this supervision is done with every attempt to insure that the students are making the decisions. Most often the students and supervisor have wrestled with the ambiguities and uncertainties presented by the case and have agreed on a plan together. The goal of student autonomy is not possible when a case requires fairly quick and directive action from a supervisor or when a case involves particularly complex facts or law. The supervisor participates in meetings, visits, and other out-of-court activities, but usually as a back-up or observer and not as the principal lawyer. Sometimes the supervisor intervenes—particularly in court when faced with an argument or twist not anticipated in preparations. Nonetheless, student autonomy and control are our ideal, largely because they build student confidence. If the students feel professionally independent, we are educationally more successful.

*E. Classroom Component*⁴²

Case demands are kept to a minimum in the first two weeks of a typical semester. During this time, the students work intensively to learn Michigan law and procedure, basic trial practice skills, and the non-legal subject matter of child maltreatment, child development, and the social services context in which they will be practicing law.⁴³ Through a series of classes and simulations, the Clinic prepares students to handle live cases. Although some law school clinics require the classroom component in the semester *before* law students handle live client cases, we find that the immediacy of the students' need for this information and skills informs and enhances their performance in class. The students bring their case experiences into the classroom, and these experiences further inform the legal, ethical, and policy issues that are covered in the class. We believe that our close supervision insures that case service does not suffer by doing live cases and the classroom component concurrently.

The clinical psychology faculty member and graduate student participate in one class session per week. Although these classes are sometimes geared to a certain subject, such as child development, they rely very little on lecture and didactic presentation. Most often the psychological teaching is done in the context of case conferences in which active student cases are selected as vehicles for addressing certain topics such as drug use and parenting, sexual abuse, mental illness, family preservation, or permanency planning. Formal case conferences are scheduled during regular class times, often around a theme, but meetings among law students, supervisors, clinical psychologists, and others are also scheduled as needed.

42. For a discussion of many of the exercises and simulations used in the classroom component, see *infra* app. A.

43. Materials used in the course may include: DONALD N. DUQUETTE, *ADVOCATING FOR THE CHILD IN PROTECTION PROCEEDINGS* (1990); DONALD N. DUQUETTE, *MICHIGAN CHILD WELFARE LAW: CHILD PROTECTION, FOSTER CARE, TERMINATION OF PARENTAL RIGHTS* (1994); DONALD N. DUQUETTE, SUELLYN SCARNECCHIA & LANCE JONES, *CHILD ADVOCACY LAW CLINIC MANUAL* (on file with the *University of Michigan Journal of Law Reform*); HARALAMBIE, *supra* note 5; THOMAS A. MAUET, *TRIAL TECHNIQUES* (4th ed. 1996); NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES, *CHILD DEVELOPMENT: A JUDGE'S REFERENCE GUIDE* (1993). Clinic faculty might also want to provide students with copies of their state's substantive law on child protection and abuse, and rules of evidence and civil procedure.

Many students have told us that they were drawn to the Clinic because of the frequency of court appearances, the autonomy, and the likelihood that they will conduct a major trial. The classroom component includes a trial advocacy track that prepares students for these court appearances. The trial advocacy classes rely primarily on workshops and simulations in which student performances are videotaped and reviewed by faculty members.

Although the Clinic has a reputation for exposing students to considerable litigation experience, non-adversarial means of conflict resolution such as negotiation and mediation are especially important in family law. The Clinic trains students in these techniques through an elaborate negotiation simulation, a class devoted to mediation, and in-case conferences that explore means of conflict resolution and problem solving.

Interviewing and client counseling are taught in the context of the students' live cases. A class session introduces the students to the fundamentals of interviewing and the legal and ethical issues of client counseling. In my experience, children as clients pose special challenges in this regard, as does the representation of a large bureaucracy.

The Clinic also satisfies the law school's professional responsibility requirement. We address professional responsibility issues in several formal classes, but simply counting the hours of scheduled class time understates the Clinic's emphasis on ethics. The majority of teaching and learning about ethical issues happens in the context of cases and individual supervision. Clinical faculty help identify ethical issues, encourage reference to the rules, and facilitate discussion. The students keep a journal of ethical issues they encounter throughout the semester. At the end of the semester, the students submit the journals, and a faculty member reviews them and prepares a handout of selected excerpts. This handout forms the basis of our final ethics class of the semester.

The class meetings provide an opportunity not only to learn about the current child welfare legal system, but also to critically evaluate the system with an eye toward developing better laws and a better social system in the future. A critical legal studies perspective can be used. Issues of race, gender, and class are evident because children of color are

disproportionately represented in the foster care system⁴⁴ and respondents (parents accused of child abuse or neglect) are nearly always poor.⁴⁵ Mothers and fathers are likely to play different roles in the abuse and neglect of their children as well as in its resolution. Female student attorneys may be treated differently than male students, and students of color may be treated differently than white students.⁴⁶

There are emerging legal and public policy issues that also present themselves quite starkly. The proper balance of constitutional rights between children and their parents and the state's role and responsibility in intervening in family life will remain important areas of study for a considerable time.⁴⁷ The Clinic's formal classes only touch upon these substantive legal issues and thorny policy choices unless students have to brief the issues in an appellate case or have a legislative project that requires specialized research and drafting.

The classroom component of the Clinic is not an advanced substantive course in children, family, and the state, even though that is the specialty of most of the clinical faculty. Nor is it an advanced seminar on child abuse or neglect,⁴⁸ because we do not attempt to explore thoroughly the legal doctrine and public policy issues of the field.

The casework and classroom component of the Clinic combine to provide student attorneys an opportunity to practice their profession at a high level of competence and to reflect on the experience. The fairly narrow area of children's cases are excellent vehicles for these broader educational objectives and prepare students for many types of legal practice.

44. See U.S. HOUSE OF REPRESENTATIVES COMM. ON WAYS & MEANS, 1996 GREEN BOOK 749 (1996) (1994 data).

45. See Green & Dohrn, *supra* note 4, at 1285.

46. See generally Suellen Scarnecchia, *Gender & Race Bias Against Lawyers: A Classroom Response*, 23 U. MICH. J.L. REFORM 319 (1990) (describing development of classroom sessions on bias against white women and people of color).

47. See Green & Dohrn, *supra* note 4, at 1281-83.

48. The University of Michigan Law School offers an Interdisciplinary Seminar on Child Abuse and Neglect to law students who have already taken the Child Advocacy Law Clinic. The Interdisciplinary Seminar, jointly taught by clinical psychology, social work, and the law school, includes graduate and professional students from the three schools. See Scarnecchia, *supra* note 18.

CONCLUSION

Clinical legal education is an essential complement to traditional law school curricula. Clinical education is uniquely able to integrate the teaching of lawyering skills and legal doctrine in a highly compelling format, elevating students' understanding of both. Specifically, a child advocacy law clinic can accomplish several basic objectives: teaching the range of practical skills deemed essential to competent legal education by the ABA; benefiting the hosting law school through an interdisciplinary education not offered in other courses, providing a much needed public relations benefit; and serving an important need in most communities for quality representation for the parties in child abuse and neglect cases, where involved individuals are often underrepresented in society at large. Most importantly to an educator, participation in a child advocacy law clinic profoundly affects students as they come face to face with significant ethical, emotional, and legal issues. These issues require that the students both learn quickly and engage in deep reflection. I encourage other law schools to explore the possibility of establishing a child advocacy clinic, and to use the model that has proved so successful for the University of Michigan Child Advocacy Law Clinic.

APPENDIX A

SUMMARY OF MAJOR SIMULATIONS AND EXERCISES USED IN THE CHILD ADVOCACY LAW CLINIC

1. EXERCISE #1—STAGES OF A CHILD ABUSE CASE.

This introductory exercise follows a particular case of child abuse from the initial discovery in a hospital, through the protective services investigation, petition to the court, adjudication, disposition, review hearings, and termination of parental rights. At each step of the process the student is asked to answer questions. These questions include: Is the physician required to report? To whom? What quality of evidence is required at this hearing? What is the standard of evidence at termination of parental rights? This exercise is designed to make the students familiar with the basic statutes and court rules. We review the exercise in class and use class discussion to reinforce the student's knowledge of the basic law and procedures and to explore areas of uncertainty and ambiguity in the existing law.

2. PRELIMINARY HEARING SIMULATION

Each student is assigned a role, representing the child, the agency, or the parent, and presents a case at a preliminary hearing before a judge (a faculty member) in our moot court room. They are asked to make a brief opening statement, do a direct or cross examination of the caseworker, and present a closing argument. The case is a close call on the facts and law, providing students with a reinforcement of basic law and procedure as well as an introduction to trial practice. The hearing is videotaped, and the faculty member/judge reviews it later with the student attorneys.

3. PRELIMINARY HEARING DECISIONMAKING SIMULATION

This in-class simulation attempts to simulate a preliminary hearing requiring quick decisionmaking. The students are paired with a partner, provided with a petition and a brief

caseworker report, and told that people connected with the case are present at the courthouse. They are not, however, told the identities of the people who are present. They may speak to these people in whatever order they wish. When they choose to interview a person, they tell the instructor who provides a written summary of an interview. Each student team decides what recommendation to make to the court. In the second half of the class, student teams present their position as if in court, providing reasons, legal authority, and the level of specificity required by the court. We then discuss the simulation with the students, the differing approaches taken by their classmates, and the relation of the simulation to the real preliminary hearings they are about to handle.

4. EVIDENCE REVIEW AND SIMULATION

The faculty assigns roles to students with instructions to object or defend against objections as a transcript of direct and cross examinations is read.

5. MOCK JURY TRIAL

Before a jury of undergraduates, high school students, and graduate students, the students try a termination of parental rights case.⁴⁹ Assigned to roles and working in teams composed of one to three students, the students prepare and argue any motions *in limine* they think are required, propose jury instructions as necessary, and fully present their case to the jury. The caseworker is generally a worker from one of the communities in which we practice, or a social work graduate student. A psychologist witness is played by a clinical psychology graduate student (usually someone who is participating in the interdisciplinary seminar on child abuse and neglect). The mother of the child is played by an actress. The case is close; direct and cross exams and argument can swing the outcome.

At the end of argument and instructions, the jury retires to a jury room while the students observe the deliberations, with

49. Termination of parental rights is not a jury issue in Michigan, but apart from that difference, the simulation closely resembles a real world experience. See *In re Miller*, 445 N.W.2d 168 (Mich. Ct. App. 1989). We impose some time limits and cut a few corners—for instance, there is no voir dire. Each trial takes approximately five hours.

the jurors' knowledge, via closed circuit television. Once the jury renders its verdict, we discuss the experience with the jurors, who are usually eager to share their observations with student attorneys. The entire experience is videotaped and reviewed later with a faculty member.

6. NEGOTIATION SIMULATION

A father is accused of sexual abuse and a mother of failing to protect the child. The evidence is shaky but the consequences are great for the accused. After class preparation in the basics of negotiation theory and readings in settlement approaches, including the classic *Getting to Yes*,⁵⁰ the students are assigned to roles representing the agency, child, mother, or father. They view a videotape of an interview with their client intended to give them their bargaining range and show the client's emotions and motives. Even for the most discerning student, there remains some ambiguity as to the scope of their authority to settle. A stern judge has convened a settlement conference. The students negotiate during class time. They need not settle, but most do. The settlements are drafted as stipulations and orders. Students also prepare a paper reflecting on the negotiation process, their approach, and that of their opponents. A faculty member charts the settlements along certain critical points and prepares a comparison chart for class discussion. There is always variation in outcome, and we attempt to determine why this occurs. The discussion is rich with issues of strategy, analysis, drafting, ethics, and judgment.

50. ROGER FISHER & WILLIAM URY, *GETTING TO YES: NEGOTIATING AGREEMENT WITHOUT GIVING IN* (1981).

APPENDIX B

FUNDING

A. Budget Options

There are many ways to structure a child advocacy law clinic. Salaries and other costs vary considerably from school to school. Despite these limitations, we offer this sample budget. The budget assumes that the clinic will teach sixteen students per semester for two semesters per year for seven credits, each with a companion class meeting four to six hours per week. It assumes a student-faculty ratio of 8:1. Even a smaller clinic requires more than one faculty member to cope with conflicting court appearances and class meetings. For instance, two faculty members devoting half-time each for eight to ten students is probably better than one full-time faculty member. A clinic can get both too small and too large for meaningful supervision. We prefer a ceiling of twenty-two or twenty-four students. The budget does not provide for office space, furniture or equipment.

Sample Annual Budget

Director/Clinical Faculty	\$ 75,000
Clinical Faculty	\$ 55,000
Interdisciplinary Faculty (Social work, psychology, pediatrics and/or psychiatry on contract basis.)	\$ 8,000
Legal Secretary/Administrator	\$ 28,000
Part-time typist	\$ 10,000
Subtotal	\$ 176,000
Fringe (25% of 176,000)	\$ 44,000
TOTAL PERSONNEL	\$ 220,000
Travel, supplies, phone, books, equipment, etc.	\$ 20,000
TOTAL	\$240,000

B. Sources of Support

The ideal source of funding for any clinic, including a child advocacy clinic, is from law school hard dollars on a predictable and consistent basis. The resulting stability of curriculum and faculty is a great asset. Even if a school can secure outside funding from grants or contracts, as discussed below, the law school should commit to the program as a guarantor for circumstances in which certain soft money sources are not available for a particular time. Program stability in the law school and in the community is important for the ongoing success of the clinic. Without some job security, clinical faculty will be distracted from the program itself and will not have the commitment and loyalty important to the law school and the success of the clinic.

Even though law school fiscal commitment is very important, one of the benefits of a child advocacy law clinic is that it is likely to attract outside funding from various sources. We believe that private foundations are increasingly recognizing the need for improving the legal institutions and making the legal profession more responsive to the needs of children. Some can be motivated by a desire to train and encourage a generation of lawyers to develop skills in child law. Others may want to help specific types of children. Do not overlook local foundations, such as the Towsley Foundation that started the University of Michigan Child Advocacy Law Clinic, or even smaller family foundations. These latter foundations may be among the best sources for sustained giving. One of the most far-reaching and ambitious child advocacy law programs is that of the CIVITAS Child Law Center at Loyola University Chicago School of Law, funded by a private philanthropist which provides scholarship support and specialized training to law students throughout their law school careers.⁵¹

Private philanthropy through endowments, perhaps from alumni, could be another important source of funds. Because of the unique combination of assisting children and providing sound legal pedagogy, a child advocacy clinic may be of particular interest to potential donors to a law school. An endowment

51. For more information about the CIVITAS Child Law program, contact Professor Diane Geraghty, 16 East Pearson, Chicago, IL 60611; tel: 312-915-6481, fax: 312-915-6485.

institutionalizes a program that may continue to benefit law students, individual children, and the larger community.

Government funding is hardly fashionable as this is being written. Federal Department of Education Title IX funding for clinical legal education is not expected to survive.⁵² However, some government sources remain. At least one child law clinic, at the University of Washington in Seattle, is supported in part by federal Children's Justice Act⁵³ funds. Each state has a Children's Justice Act Board whose mandate includes funding model programs that may improve the effectiveness of judicial and administrative action in child abuse cases.⁵⁴ Children's Justice Act funds are a percentage of fines collected from convicted offenders, allocated to the states on a formula basis, and dispersed by each state government with advice and oversight from a high-level, multidisciplinary task force.⁵⁵

A clinic should also consider state funding. State legislatures are feeling the need for improvement of child welfare laws, including improvement in legal representation of the child, parents, and the agency. A law school may be able to provide meaningful expertise for systemic and sustained improvement of a state system through a child advocacy clinic and some related activities. Research supports the proposition that aggressive child advocacy not only benefits a particular child, but also the system itself in the form of fewer court hearings, less time for children in foster care, and quicker permanency decisions for children.⁵⁶ These system improvements can save money so that investment in improving child advocacy may be a means to control other state costs.

Another activity that could benefit a state system generally, and is also a companion to a child advocacy clinic, is a Child Welfare Law Resource Center.⁵⁷ Such a center can provide regular training of judges and lawyers, develop legal and interdisciplinary resource materials, and respond to specific requests for child welfare law information. The Child Welfare Law Resource Center at the University of Michigan provides

52. See Lisa G. Lerman, *Fee-For-Service Clinical Teaching: Slipping Toward Commercialism*, 1 CLINICAL L. REV. 685, 686 (1995).

53. 42 U.S.C. § 5106c (1995). For information about the Children's Justice Act in your state, contact the National Center on Child Abuse and Neglect, U.S. Department of Health and Human Services, in Washington, D.C.

54. See 42 U.S.C. § 5106c.

55. See *id.*; 42 U.S.C. § 10603.

56. See Duquette & Ramsey, *supra* note 17, at 388-91.

57. See *supra* note 21 and accompanying text.

research memos to member lawyers and judges upon request and also provides training and sends out a regular newsletter in cooperation with the state bar Juvenile Law Section.

State bar foundations and IOLTA funds (Income on Lawyer Trust Accounts)—generally administered by the state bar—are also potential sources of outside funds.

A very important source of funds may be contracts for legal service with the child welfare state agency or the local court. Medical education has long been reimbursed for the market value of the services rendered by its trainees. If pursued carefully, law schools can do the same. As discussed above, if a court or someone else pays for services of law students or faculty, that delivery of services must be structured to assure that legal education remains the primary objective and that the law students are not exploited for service or money but actually receive a benefit to their legal education.

We have contracted with local counties and the state to provide trial counsel in termination of parental rights cases. We would bill hourly for faculty time handling the case but not for student time or teaching time. This turns out to be a bargain for the state and an important source of funds for our clinic. In most jurisdictions the court also appoints and pays counsel for children and parents.⁵⁸ Sometimes the court enters into contracts where a fixed amount of money is paid to a law office in exchange for handling a certain number of cases in a year. A law school child advocacy clinic could enter into such a contract or accept court appointments and bill their time as private counsel would bill. The revenue would hardly support an entire clinic, but could provide a modest proportion of a budget. If the clinic does not bill for student time, the court can still realize a benefit of high quality representation but at somewhat less cost than if the private bar were to handle the cases. A clinic handling a modest number of cases is unlikely to be a threat to the income of the private bar.

58. See, e.g., ARK. CODE ANN. § 9-27-316(e) (Michie 1993); W. VA. CODE § 49-6-2 (1996).